

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**MISSOURI PRIMATE FOUNDATION,
et al.,**

**Plaintiffs and
Counterclaim Defendants,**

v.

**PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC., et al.,**

**Defendants and
Counterclaim Plaintiffs.**

Case No. 4:16-cv-02163

**COUNTERCLAIM PLAINTIFFS’
MOTION FOR AN ORDER COMPELLING DISCOVERY AGAINST
COUNTERCLAIM DEFENDANT CONNIE BRAUN CASEY**

Pursuant to Rule 37 of the Federal Rules of Civil Procedure, Counterclaim Plaintiffs, People for the Ethical Treatment of Animals, Inc. and Angela Scott a/k/a Angela G. Cagnasso (together, “Plaintiffs”) hereby move for an order compelling Counterclaim Defendant Connie Braun Casey (“Casey”) to cure discovery defaults and ongoing failures to comply with Court ordered discovery, and in support state the following:

1. On February 23, 2018, Plaintiffs served their “First Requests for Production of Documents” (“Document Requests”) pursuant to Federal Rule of Civil Procedure 34 on, among others, Casey. [Exhibit A, attached to Declaration of Martina Bernstein (“Bernstein Decl.”), filed concurrently herewith].
2. On February 26, 2018, Casey’s counsel filed a motion to withdraw. [ECF No. 44].
3. On March 12, 2018, the Court granted the motion to withdraw and stayed this

case until May 1, 2018, in order for Casey and the other defendants to have time to find new counsel. [ECF No. 52, at 1.] The Court also set a new deadline for all parties to respond to outstanding discovery requests “on or before **May 31, 2018.**” [*Id.* at 2.]

4. Also on March 12, 2018, the Court set a deadline for the parties to “make all disclosures required by Rule 26(a)(1), Fed. R. Civ. P., no later than **May 18, 2018.**” [ECF No. 54, at 2.] On May 17, 2018, attorneys Daniel T. Batten and Brian D. Klar entered their appearances on behalf of Casey in this matter. [ECF Nos. 62-65.]

5. On June 14, 2018, Plaintiffs belatedly received Casey’s supplemental disclosures pursuant to Rule 26(a), stating in relevant part that she “intends to seek recovery of damages for . . . defamatory statements against her, the amount of which cannot currently be determined as the damages are continuing, along with her costs, expenses, and attorneys’ fees against Counterclaim Plaintiffs in connection with this matter.” [Exhibit B, attached to Bernstein Decl.]

6. Although Rule 26 requires a party seeking damages to provide both a computation of those damages and supporting documents showing how damages were calculated and supported—and Plaintiffs specifically requested Casey to comply with these requirements—Casey did neither.

7. On June 15, 2018, Plaintiffs belatedly received Casey’s written responses to Plaintiffs Document Requests [Exhibit C, attached to Bernstein Decl.], as follows:

REQUEST NO. 1: All documents relating to any of the chimpanzees in any of the Responding Parties’ custody or control during any period of time during the Relevant Time Period.

RESPONSE: Produced concurrently herewith.

REQUEST NO. 7: To the extent not already encompassed within the foregoing requests, all documents relating to licenses or permits, or applications for licenses or permits, any of the Responding Parties have received or submitted regarding the Chimpanzees.

RESPONSE: Produced concurrently herewith.

REQUEST NO. 15: To the extent not already encompassed within the foregoing requests, all communications with, or from, paid or unpaid (volunteer) staff, contractors, or other agents referring or relating to the Chimpanzees.

RESPONSE: Produced concurrently herewith.

REQUEST NO. 22: To the extent not already encompassed within the foregoing requests, all written programs of veterinary care relating to the Chimpanzees, including but not limited to APHIS Form 7002 and/or other records required to be maintained under the Animal Welfare Act.

RESPONSE: Produced concurrently herewith.

REQUEST NO. 27: To the extent not already encompassed within the foregoing requests, all documents that reflect or support the contention in the March 21, 2017, Declaration of Connie Braun Casey (ECF No. 017-1), that the transfer of three chimpanzees was based on transfer discussions that occurred "well before the receipt of PETA's Notice of Intent to Sue."

RESPONSE: None.

8. Between June 14 and June 27, 2018, Plaintiffs also received several documents from Casey, but the production appears on its face deficient. Among other things, it omitted documents that all USDA licensees like Casey are *required to have* in their possession, in order to comply with the Animal Welfare Act regulations.

9. Counsel for Plaintiffs, Jared Goodman and Martina Bernstein, attempted to confer in good faith with Dan Batten, counsel for Casey, by telephone, on June 21, in order to resolve these issues. Plaintiffs' counsel attempted to determine the reason for these apparent production gaps, including (i) whether Casey made a sufficiently good faith search for all responsive records in her possession and control; (ii) whether responsive documents existed but were destroyed; and (iii) whether the production was known to be incomplete and would be supplemented in time of upcoming depositions. [Exhibit D, attached to Bernstein Decl.] Attorney Batten refused to confirm, or otherwise meaningfully address, these concerns.

10. When Plaintiffs' counsel sent an email confirming her understanding of Casey's position, Attorney Batten disagreed with the summary but declined repeated requests to clarify any supposed inaccuracies. [Exhibits E and F, attached to Bernstein Decl.] To date, despite Plaintiffs' counsel's repeated attempts to reach an accord, Attorney Batten's last position on these issues was that "it was not worth responding" further. [Exhibit E].

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order, in the form submitted herewith, granting Plaintiffs' motion as follows:

ORDERING that Casey shall conduct a thorough, good faith search of all documents in her possession, custody or control, and produce all documents responsive to Plaintiffs' Document Requests Nos. 1, 7, 15, 22, 27, within seven business days of the date of the Order.

ORDERING that if Casey previously had responsive documents in her possession, custody or control, but those documents were destroyed, Casey shall identify the contents of each destroyed document and state when the document was destroyed.

ORDERING that if Casey does not have any written Programs of Veterinary Care and/or Environment Enhancement Plan(s) signed by an attending veterinarian, that she confirm such, within seven business days of the date of the Order.

ORDERING that, pursuant to Fed. R. Civ. P. 26(a)(1)(A)(iii)), Casey shall provide both a computation of claimed damages of which she is presently aware, and supporting documents, showing how damages were calculated within seven business days of the date of the Order.

GRANTING Plaintiffs an award of costs and attorneys' fees relating to the motion to compel, and that Plaintiffs have 14 days from the date of the Order granting this motion for sanctions to file an affidavit detailing these attorneys' fees and costs.

Dated: July 5, 2018

Respectfully submitted,

/s/ Martina Bernstein
MARTINA BERNSTEIN (#230505CA)
PETA Foundation
1536 16th St. NW
Washington, DC 20036
202.483.7382
Fax No: 202.540.2208
martinab@petaf.org

JARED S. GOODMAN (#1011876DC)
(Admitted *pro hac vice*)
PETA Foundation
2154 W. Sunset Blvd.
Los Angeles, CA 90032
323.210.2266
Fax No: 213.484.1648
jaredg@petaf.org

POLSINELLI PC
JAMES P. MARTIN (#50170)
KELLY J. MUENSTERMAN (#66968)
100 S. Fourth Street, Suite 1000
St. Louis, MO 63102
314.889.8000
Fax No: 314.231.1776
jmartin@polsinelli.com

Attorneys for Defendants/

CERTIFICATE OF SERVICE

I certify that on July 5, 2018, the foregoing Counterclaim Plaintiffs' Motion for an Order Compelling Discovery Against Counterclaim Defendant Connie Braun Casey, the Declaration of Martina Bernstein and the Proposed Order were electronically filed with the Clerk of the Court using the CM/ECF system, by which notification of such filing was electronically sent and served to the following:

Brian Klar, bklar@lawsaintlouis.com
Daniel T. Batten, dbatten@lawsaintlouis.com
Attorneys for Plaintiff/Counterclaim Defendant Connie Braun Casey

Geordie Duckler, geordied@animallawpractice.com
Attorney for Plaintiff/Counterclaim Defendant Andrew Sawyer

Patrick Hanley, p.hanley@att.net
Attorney for Plaintiff/Counterclaim Defendant Vito Stramaeglia

And was served by regular mail on the following:

Missouri Primate Foundation
c/o Connie Braun Casey
12338 State Rd. CC
Festus, MO 63028

Dated: July 5, 2018

/s/ Martina Bernstein